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Subject: Objection to the Shoshone Land Management Plan Draft Decision

From: G. A. Warren

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I. Background Supporting the Objection

This objection addresses concerns related to the Continental Divide National Scenic Trail (CDNST). Land Management Plans (Plans) are to protect the CDNST rights-of-way and high potential route segments. Related, Plans are to identify a Management Area (MA) that provides for CDNST nature and purposes by: (1) prescribing desired visitor experience opportunities and settings, and (2) conserving the scenic, natural, historical, and cultural qualities of the corridor¹. Standards and guidelines need to be established that are associated with and support CDNST goals and desired conditions, and monitoring methods are to be described.

Legislative History, CDNST Study Report, and Executive Order Considerations

National Scenic and Historic Trails – Sec. 5 (16 U.S.C. 1244)

The responsible Secretary shall...submit...a comprehensive plan for the acquisition, management, development, and use of the trail, including but not limited to, the following items:

1. Specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved,... an identified carrying capacity of the trail and a plan for its implementation;
2. The process to be followed by the appropriate Secretary to implement the marking requirements established in section 7(c) of this Act;
3. A protection plan for any high potential historic sites or high potential route segments; and
4. General and site-specific development plans, including anticipated costs.”

Administration and Development – Sec. 7 (16 U.S.C. 1246)

The Secretary of Agriculture is charged with the overall administration of the CDNST. Pursuant to Section 5(a), the CDNST was established and designated on November 10, 1978. Section 7(a)(2) states that the, “...Secretary shall select the rights-of-way for national scenic and national historic trails and shall publish notice thereof of the availability of appropriate maps or descriptions in the Federal Register; Provided, That in selecting the rights-of-way full consideration shall be given to minimizing the adverse effects upon the adjacent landowner or user and his operation. Development and management of each segment of the National Trails

¹ The term “corridor” describes an allocation established through the land use planning process, pursuant to Section 7(a)(2) of the National Trails System Act (“rights-of-way”) and E.O. 13195, for a public land area of sufficient width within which to encompass National Trail resources, qualities, values, and associated settings and the primary use or uses that are present or to be restored to provide for the nature and purposes of the CDNST. The term “corridor” in this document does not relate to the definition found in 36 CFR 219.3.

System shall be designed to harmonize with and complement any established multiple-use plans for the specific area in order to insure continued maximum benefits from the land....”

Multiple-use plans that were established in 1978 when the CDNST was established and designated have been revised. Therefore, in a legal sense, the legislative requirement to “...harmonize with and complement any established in multiple-use plans...” is no longer binding. Nevertheless, an optimum location assessment may find that designing the CDNST rights-of-way corridor to pass through inventoried Primitive and Semi-Primitive Recreation Opportunity Spectrum (ROS)² settings would insure continued maximum benefits of the land. This would include the recreation and conservation benefits resulting from (1) locating the National Trail corridor “to provide for maximum outdoor recreation potential and for the conservation and enjoyment of the nationally significant scenic, historic, natural, or cultural qualities of the areas...” (16 U.S.C. 1242(a)(2)); and (2) avoiding, to the extent possible, activities along the CDNST that would be incompatible with the purposes of the CDNST for which it was established (16 U.S.C. 1246(c)). The rights-of-way requirement of 16 U.S.C. 1246(a)(2) is directed at selecting the 3,100-mile CDNST rights-of-way corridor and does not modify the nature and purposes of the CDNST. The legislative requirement for the Secretary of Agriculture to take action and select the CDNST rights-of-way on National Forest System lands is addressed by incorporating a CDNST Management Area (MA) corridor through land management planning processes (FSM 2353.44b). The establishment of CDNST MAs could facilitate selecting and publishing the CDNST rights-of-way in the Federal Register (16 U.S.C. 1246(a)(2)) and meet attached NEPA requirements.

NTSA Sec. 7(c) (16 U.S.C.1246(c)) – “National scenic or national historic trails may contain campsites, shelters, and related-public-use facilities. Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted by the Secretary charged with the administration of the trail. Reasonable efforts shall be made to provide sufficient access opportunities to such trails and, to the extent practicable, efforts be made to avoid activities incompatible with the purposes for which such trails were established. The use of motorized vehicles by the general public along any National Scenic Trail shall be prohibited.... Other uses along the historic trails and the Continental Divide National Scenic Trail, which will not substantially interfere with the nature and purposes of the trail, and which, at the time of designation, are allowed by administrative regulations, including the use of motorized vehicles, shall be permitted by the Secretary charged with administration of the trail....” Other uses include recreational and resource uses that may be incompatible with the nature and purposes for which the CDNST was designated and established.

² ROS classes are defined in the CDNST Comprehensive Plan, Chapter IV(5)(c).

Executive Orders

Executive Orders 11644 and 11989 – Use of off-road [motorized] vehicles on the public lands: “...By virtue of the authority vested in me as President of the United States by the Constitution of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), it is hereby ordered as follows: Section 1. *Purpose*. It is the purpose of this order to establish policies and provide for procedures that will ensure that the use of off-road [motorized] vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands....” (Related: 36 CFR 212.55)

Executive Order 13195 – Trails for America in the 21st Century: “By the authority vested in me as President by the Constitution and the laws of the United States of America, and in furtherance of purposes of the National Trails System Act of 1968...and to achieve the common goal of better establishing and operating America's national system of trails, it is hereby ordered as follows: Section 1... Federal agencies will, to the extent permitted by law and where practicable ... protect, connect, promote, and assist trails of all types throughout the United States. This will be accomplished by: ... (b) Protecting the trail corridors associated with National Scenic Trails...to the degrees necessary to ensure that the values for which each trail was established remain intact....”

CDNST Nature and Purposes

The nature and purposes (NTSA, Sec.7(c)) of the CDNST must be described and used as a basis for determining what activities and resource uses are allowed along the CDNST corridor. The definition is formulated by extrapolating from the Trails for America report, NTSA, associated Congressional Reports, and CDNST Study Report.

Trails for America

Trails for America (1966), a report prepared by the Bureau of Outdoor Recreation in response to President Johnson’s Natural Beauty Message of February 8, 1965, describes that, “the entire length of each National Scenic Trail, together with sufficient land area on both sides to safeguard adequately and preserve its character, should be protected....”

National Trails System Act

NTSA Sec. 3. [16 U.S.C. 1242] (a) (2). “National scenic trails, established as provided in section 5 of this Act, which will be extended trails so located as to provide for maximum outdoor recreation potential and for the conservation and enjoyment of the nationally significant scenic, historic, natural, or cultural qualities of the areas through which such trails may pass.”

NTSA Sec. 7. [16 U.S.C. 1246] (c). “Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted...[To] the extent practicable, efforts be made to avoid activities incompatible with the purposes for which such trails were established. The use of motorized vehicles by the general public along any National Scenic Trail shall be prohibited....”

CDNST Study Report

The Study Report of 1976, prepared by the Bureau of Outdoor Recreation in response to the identification of the CDNST, under the NTSA, as as a potential addition to the national trails system, describes that, “The primary purpose of this trail is to provide a continuous, appealing trail route, designed for the hiker and horseman, but compatible with other land uses... One of the primary purposes for establishing the Continental Divide National Scenic Trail would be to provide hiking and horseback access to those lands where man's impact on the environment has not been adverse to a substantial degree and where the environment remains relatively unaltered. Therefore, the protection of the land resource must remain a paramount consideration in establishing and managing the trail. There must be sufficient environmental controls to assure that the values for which the trail is established are not jeopardized...

The trail experience on or near the Divide is an intimate one, for one can walk or ride horseback across vast fields of wildflowers and contemplate a story dating from the dawn of earth's history. This story began when a portion of the earth was thrust upward, creating the sharp precipitous peaks that were sculptured into rich land forms leaving sparkling lakes, crystal-clear streams, and myriads of cascading waterfalls. Along the way, the tranquility of the alpine meadows, verdant forests and semi-desert landscape overwhelms everyone who passes that way. The trail would provide the traveler his best encounter with the Continental Divide — its serenity and pure air — and would supply for every trail traveler some of the world's most sublime scenes...

The basic goal of the trail is to provide the hiker and rider an entree to the diverse country along the Continental Divide in a manner, which will assure a high quality recreation experience while maintaining a constant respect for the natural environment... The Continental Divide Trail would be a simple facility for foot and horseback use in keeping with the National Scenic Trail concept as seen in the Appalachian and Pacific Crest Trails.”

CDNST Leadership Council

The CDNST Leadership Council, in 2004, established a Vision and Guiding Principles for the development and protection of the CDNST. The Vision for the CDNST is: “Complete the Trail to connect people and communities to the Continental Divide by providing scenic, high-quality, primitive hiking and horseback riding experiences, while preserving the significant natural, historic, and cultural resources along the Trail.” The Council’s membership consists of senior Forest Service, Bureau of Land Management, and National Park Service officials.

Public Involvement in the Formulation of Policy

The formulation of the nature and purposes direction for the CDNST was developed through a public process (36 CFR 216) and approved by Associate Chief Hank Kashdan as documented in Federal Register: October 5, 2009 (74 FR 51116). The following is the response to nature and purposes comments –

“The amendments to the 1985 CDNST Comprehensive Plan and corresponding directives are to ensure that the nature and purposes of the CDNST track those in the 1976 CDNST Study Report and 1977 CDNST Final Environmental Impact Statement, which were prepared pursuant to the NTSA (16 U.S.C. 1244(b)). The 1976 CDNST Study Report states:

The primary purpose of this trail is to provide a continuous, appealing trail route, designed for the hiker and horseman, but compatible with other land uses. * * * One of the primary purposes for establishing the Continental Divide National Scenic Trail would be to provide hiking and horseback access to those lands where man's impact on the environment has not been adverse to a substantial degree and where the environment remains relatively unaltered. Therefore, the protection of the land resource must remain a paramount consideration in establishing and managing the trail. There must be sufficient environmental controls to assure that the values for which the trail is established are not jeopardized. * * * The basic goal of the trail is to provide the hiker and rider an entree to the diverse country along the Continental Divide in a manner, which will assure a high-quality recreation experience while maintaining a constant respect for the natural environment. * * * The Continental Divide Trail would be a simple facility for foot and horseback use in keeping with the National Scenic Trail concept as seen in the Appalachian and Pacific Crest Trails.

Thus, the 1976 CDNST Study Report states that the primary purpose of the CDNST is to provide a high-quality recreation experience for hiking and horseback riding.

Consistent with the NTSA, the 1976 CDNST Study Report, and the 1977 CDNST Final Environmental Impact Statement, the amended CDNST Comprehensive Plan states that the nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor. The amended CDNST Comprehensive Plan and final directives implementing the amendments to the CDNST Comprehensive Plan on National Forest System lands provide that backpacking, nature walking, day hiking, horseback riding, nature photography, mountain climbing, cross-country skiing, and snowshoeing are compatible with the nature and purposes of the CDNST.... The amendments to the CDNST Comprehensive Plan and directives ensure consistency with the nature and purposes of the CDNST in the context of right-of-way acquisition, land management planning, scenery management, recreation resource management, motor vehicle use, trail and facility standards, and carrying capacity.’

The 1983 amendment to the NTSA, which added 16 U.S.C. 1246(j), does not modify the nature and purposes of the CDNST. The added subsection simply lists uses and vehicles that may be permitted on National Trails generally.

The NTSA states that all National Scenic Trails must be so located to provide for maximum outdoor recreation potential and conservation of natural, historic, and cultural resources (16 U.S.C. 1242(a)(2)). This requirement is reflected in the nature and purposes statement in the amended CDNST Comprehensive Plan, which states that the nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor. Where possible, the CDNST will be located in primitive or Semi-Primitive Non-Motorized settings, which will further contribute to providing for maximum outdoor recreation potential and conservation of natural, historic, and cultural resources in the areas traversed by the CDNST....

The Forest Service has removed the words 'non-motorized' and 'recreational' from the nature and purposes statement for the CDNST, as these words were redundant. 'High-quality scenic, primitive hiking and horseback riding' are non-motorized recreation opportunities. The Agency has not removed the word 'primitive' from the nature and purposes statement, as it is not redundant and is not ambiguous. It means 'of or relating to an earliest or original stage or state....' Preferred recreation settings, including Primitive or Semi-Primitive Non-Motorized categories, are delineated in the Forest Service's Recreation Opportunity Spectrum system (FSM 2311.1) and described in the CDNST Comprehensive Plan, Chapter IV.B.5.

The amendments to the 1985 CDNST Comprehensive Plan apply throughout the document to the extent applicable, not just to the provisions that are specifically referenced in the amendments. The Forest Service agrees that this intent should be expressly stated. Therefore, the Agency has added the following statement to the amendments:

To the extent there is any inconsistency between the foregoing revisions and any other provisions in the 1985 CDNST Comprehensive Plan, the foregoing revisions control.”

Nature and Purposes Summary

In consideration of the language in the NTSA, Congressional Reports, CDNST Study Report and public comments, the nature and purposes policy for the CDNST is: “The nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor” (CDNST Comprehensive Plan and FSM 2353.42).

Land Management Planning Considerations

The CDNST corridor is to be described through the delineation of a Management Area (MA) with plan components that provide for the nature and purposes values of this designated National

Scenic Trail (FSM 2353.44b). To provide for the nature and purposes of the National Trail, several location and management factors should be considered; such as and where reasonable to do so, the MA should be located in more primitive ROS classes; once located, management direction should provide for a Primitive or Semi-Primitive Non-motorized experiences to the extent practicable. In addition, the CDNST travelway is a concern level 1 travel route and scenic management objectives of high or very high are prescribed. The boundary of the MA should follow topographic features to the extent possible, while being at least one-half mile wide on each side of the established and potential locations of the National Trail travel routes. This recommendation is based on ROS criteria that identify remoteness for a Semi-Primitive Non-Motorized setting as: An area at least 1/2-mile but not further than 3 miles from all roads, railroads or trails with motorized use; can include the existence of primitive roads and trails if closed to motorized use. More than 3 miles would tend to classify the area as Primitive a desirable setting for the CDNST. The Forest Service Scenery Management System identifies that the Middleground begins at 1/2-mile of the travel route.

The Bureau of Outdoor Recreation, pursuant to 16 U.S.C. 1244(b), prepared a Study Report for the CDNST that was completed in 1976. The Chief of the Forest Service adopted the 1976 CDNST Study Report and 1977 CDNST Final Environmental Statement on August 5, 1981 (46 FR 39867). In 2009 the Chief amended the 1985 CDNST Comprehensive Plan and issued conforming FSM 2353.4 policy.

Comprehensive plan requirements (16 U.S.C. 1244(f)) for the CDNST are addressed through staged or stepped-down decision processes: (1) the 2009 Comprehensive Plan established broad policy and procedures, (2) land management plans guide all natural resource management activities and establish management standards and guidelines for the National Forest System (36 CFR 219.1), provide integrated resource management direction for special areas (36 CFR 219.2), and address programmatic planning requirements as described in the Comprehensive Plan (Chapter IV), and (3) mid-level and site-specific plans complete the comprehensive planning process through field-level actions to protect the corridor and then maintain or construct the travel route (FSM 2353.44b part 2). The following direction is found in the Comprehensive Plan and Forest Service Manual:

The Comprehensive Plan purpose is described in Chapter I as: "Preparation of the Comprehensive Plan for the CDNST is required by the National Trails System Act, P.L. 90-543 enacted on October 2, 1968 as amended. The National Environmental Policy Act (NEPA) and the implementing regulations for each of the Federal agencies with responsibilities for the CDNST require assessment of the environmental impacts of locating the CDNST. In addition, each of the Federal agencies is required by various Acts of Congress to prepare and implement land and resource management plans for the Federal lands over which they have jurisdiction... Because of the number of Federal and state land management agency jurisdictions and various political subdivisions traversed by the CDNST the Secretary of Agriculture intends that the Comprehensive Plan provide for a fully coordinated approach by each of the responsible Federal

and State agencies for the location, development, and management of the CDNST. It is the goal of this Comprehensive Plan to provide a uniform CDNST program that reflects the purposes of the National Scenic Trail system, and allows for the use and protection of the natural and cultural resources found along the rights-of-way and located route on lands of all jurisdictions... The primary role of the Comprehensive Plan is to serve as an authority for broad based policy and direction for the development and management of the CDNST” (CDNST Comprehensive Plan, Chapter I.C, page 2).

Land and Resource Management Plans: “Both the Forest Service and the Bureau of Land Management are required to develop land and resource management plans that are designed to integrate all resource management activities that may occur within a land use unit into a coordinated system that reflects the interaction of management activities in achieving long-range objectives and goals for public land management. This is will be accomplished through the development of a series of synergetic management prescriptions developed for specific management areas. Land and resource management plans are to provide for the development and management of the CDNST as an integrated part of the overall land and resource management direction for the land area through which the trail passes. The management direction given in Chapter IV is to be used in the development of specific land and resource management prescriptions” (CDNST Comprehensive Plan, Chapter III.E, page 6).

Nature and purposes values of the CDNST is addressed in the CDNST Comprehensive Plan in Chapter II.A, page 3. “The primary policy is to administer the CDNST consistent with the nature and purposes for which this National Scenic Trail was established. The nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor.”

Recreation Resource Management is addressed in the CDNST Comprehensive Plan in Chapter IV.B.5, page 14. Policy is described in Part b as, “(1) Manage the CDNST to provide high-quality scenic, primitive hiking and pack and saddle stock opportunities. Backpacking, nature walking, day hiking, horseback riding, nature photography, mountain climbing, cross-country skiing, and snowshoeing are compatible with the nature and purposes of the CDNST.”

Management direction is described in Chapter IV.B.5. Part c, page 16, as, “(1) Use the ROS system in delineating and integrating recreation opportunities in managing the CDNST. Where possible, locate the CDNST in Primitive or Semi-Primitive Non-Motorized ROS classes; provided that the CDNST may have to traverse intermittently through more developed ROS classes to provide for continuous travel between the Canada and Mexico borders.” All ROS classes are summarized in this section to assure that identical definitions are used across administrative units; this summary is not to be construed as indicating a desirability or compatibility of managing the CDNST corridor to provide for Semi-Primitive Motorized, Roaded Natural, and Rural ROS class conditions. Primitive and Semi-Primitive Non-Motorized

classes are consistent with the nature and purposes (values) of the CDNST. Management direction for Semi-Primitive Motorized, Roaded Natural, Rural, and Urban ROS classes allow uses that substantially interfere with the nature and purposes of the CDNST.

Forest Service directives FSM 2310 and FSM 2380 describe recreation and scenery planning policy.

- FSM 2310.3 - Policy. In addition to general planning policy presented in 36 CFR 219.1, FSM 1903, FSM 1920.3, FSM 1922.03, and FSM 2303:
 1. Use the Recreation Opportunity Spectrum (ROS) to establish planning criteria, generate objectives for recreation, evaluate public issues, integrate management concerns, project recreation needs and demands, and coordinate management objectives.
 2. Use the ROS system to develop standards and guidelines for proposed recreation resource use and development.

Relevant ROS references:

- [ROS Primer and Field Guide \(PDF\)](#) - 1990
- [ROS Project Planning Users Guide](#) - 1987
- [ROS \[Red\] Book](#) - Excerpts - 1986
- [Recreation Opportunity Setting as a Management Tool](#) - 1986
- [ROS Users Guide](#) -1982 ([Excerpts](#))

Forest Service directives FSM 2350 and a Federal Register Notice provides important planning direction.

- FSM 2350 [\[WORD\]](#) - CDNST Policy excerpts [\[WORD\]](#) - Approved by Acting Associate Deputy Chief Richard W. Sowa
- Federal Register - Notice of Final Amendments to Comprehensive Plan and Final Directives [\[TEXT\]](#) - Approved by Associate Chief Hank Kashdan, Vol. 74, No. 191, Monday, October 5, 2009
- FSM 2353.42 – Policy
 - Administer National Scenic and National Historic Trail corridors to be compatible with the nature and purposes of the corresponding trail. CDNST: The nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor.
 - FSM 2353.44b, “Continental Divide National Scenic Trail –

1. The land management plan for an administrative unit through which the CDNST passes must provide for the nature and purposes of the CDNST (FSM 2353.42) and, in accordance with the programmatic requirements of the NTSA, as amended (16 U.S.C. 1244(f)), and the CDNST Comprehensive Plan, as amended, must:
 - a. Except where the CDNST traverses a wilderness area and is governed by wilderness management prescriptions (36 CFR Part 293), establish a management area for the CDNST that is broad enough to protect natural, scenic, historic, and cultural features;
 - b. Prescribe desired conditions, objectives, standards, and guidelines for the CDNST; and
 - c. Establish a monitoring program to evaluate the condition of the CDNST in the management area.
- FSM 2353.44b parts 2 through 11 provide additional planning and management direction for the CDNST.

Forest Service directive FSM 1920 provides general planning direction.

- FSM 1920.3 part 5, states, “All Service-wide direction necessary for plan development, plan amendment, or plan revision is contained in this chapter, or supplements or handbooks thereto.” Resource integration requirements are described in FSM 1926.15, including addressing national trails and to use ROS (WO Amendment 1900-2006-2). FSH 1909.12 11.15, Exhibit 01, describes that FSM 2353.4 may be considered. FSH 1909.13 does not address National Trails.
- Specific to National Trails, the statement that, “all service-wide direction for...plan revision is contained in this chapter, or supplements or handbooks thereto,” is a misnomer for there is no substantive National Trails System Act implementation direction in the planning directives. Instead, National Scenic Trail policy is found in comprehensive plans for National Trails and FSM 2353.4 which provide policy and management direction for implementing the requirements of the National Trails System Act, while being consistent with FSM 1926.15.

II. Objection Compliance with 36 CFR 219.54(c)

This objection is filed pursuant 36 CFR 219.54 providing sufficient evidence and rationale for why an independent Forest Service review and resolution of issues should be conducted.

Part 1. The objector is G. A. Warren, 22 S Juniper Ct, Golden, CO 80401-5002; email address: NSTrail@comcast.net; website: nstrail.org

Part 2. Signature will be provided upon request.

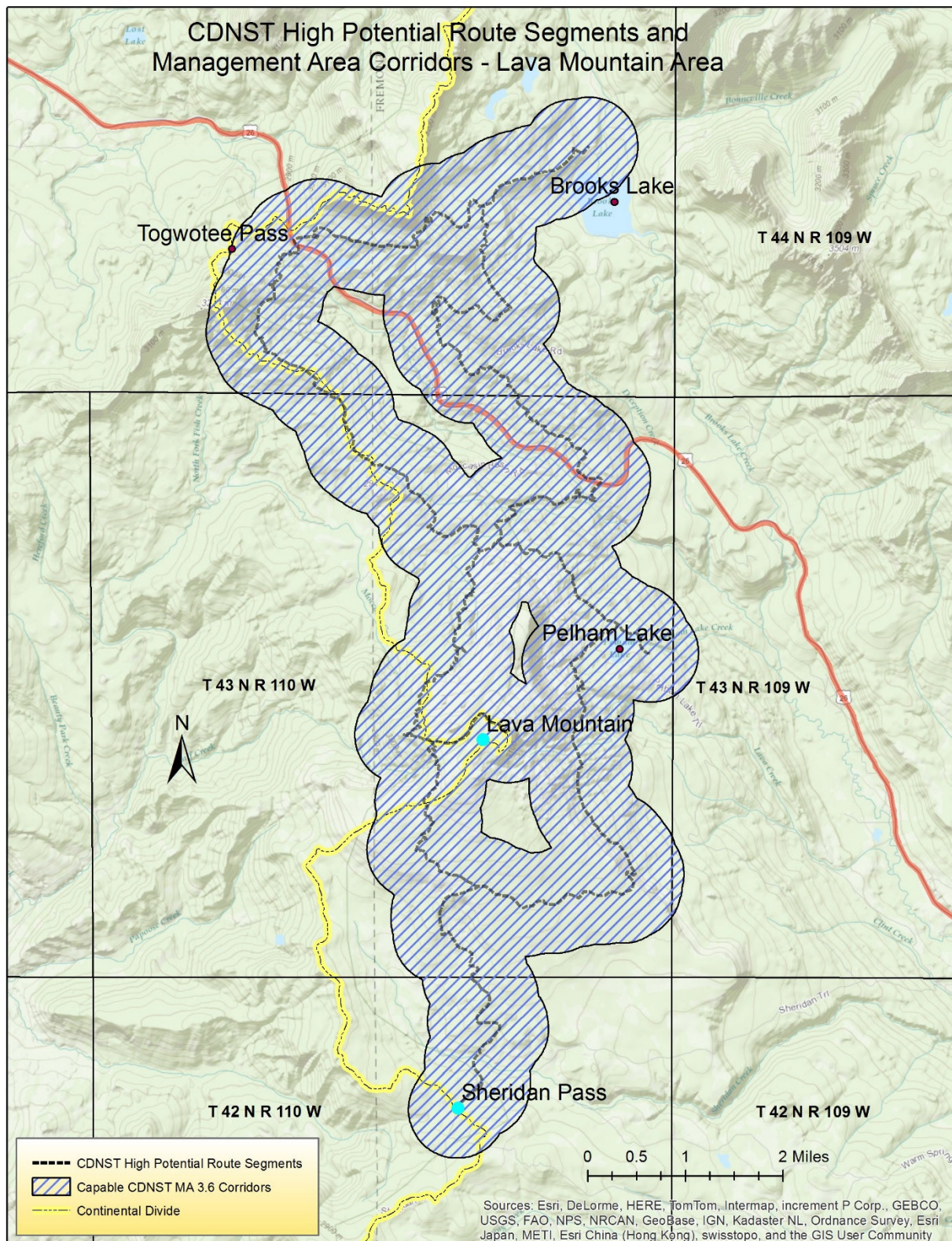
Part 3. Multiple names are not listed.

Part 4. The name of the documents that are being objected are: Land Management Plan (Plan), Final Environmental Impact Statement (FEIS), and draft Record of Decision (dROD) for the Shoshone National Forest Plan revision. The responsible official for the Plan is Daniel J. Jirón, Regional Forester for the Rocky Mountain Region. Thomas Tidwell, Chief, is responsible for, “selecting the corridor for National Scenic and National Historic Trails and publishing notice of availability of required maps and descriptions in the Federal Register” (16 U.S.C. 1246(a)(2) and FSM 2353.04b part 4). The lead regional Forest Service official for coordinating matters concerning the study, planning, location, and operation of the CDNST is Daniel J. Jirón, Regional Forester for the Rocky Mountain Region (FSM 2353.04 part 5(b)).

Part 5. A statement of the issues and/or the parts of the Plan, Plan amendment, or Plan revision to which the objection applies:

- CDNST management direction: The CDNST Management Area (MA) 3.6A management direction is a concern for the direction is inconsistent with the National Trails System Act as implemented through the E.O. 13195, 1982 Planning Rule, [CDNST Comprehensive Plan](#) Chapter III.E, page 6, and FSM 2353.44b part 1. The basic issue is that CDNST MA 3.6A standards and guidelines are not supportive nor associated with providing for the nature and purposes goals and desired conditions of the CDNST. By definition, management direction must relate to attaining the goals and objectives of a MA, which is not the case for MA 3.6A (36 CFR 219.3 and 36 CFR 219.11(c)). This results in a failure to address CDNST planning requirements (36 CFR 219.2, 36 CFR 219.21, and FSM 2353.44b part 1).
- Location of the CDNST MA corridor: A concern is the selection of the CDNST MA corridor location without assessing in the FEIS the suitability of all of the capable MA locations as identified on Map 41 of the FEIS and displayed in Figure 1 of this document. This is a failure to address the requirements of 36 CFR 219.2, 36 CFR 219.12(f) and (g), 16 U.S.C. 1246(a)(2), 16 CFR 1246(c), 36 CFR 1502.14, and the CDNST Comprehensive Plan Chapter IV.B.1 and 2, page 10.

Figure 1. Lava Mountain High Potential Route Segments and Potential Management Area Corridors



Part 6. Explanation of the objection and suggestions for improvement.

Concise statement. NFMA and NEPA processes are flawed due in part to the FEIS not addressing and taking a hard look at reasonable alternatives to the CDNST MA direction and assessing the effects resulting from locating the CDNST MA corridor in proximity to the lines identified on Map 41 of the FEIS.

I object to the omission of management direction that is supportive of providing for the nature and purposes of the CDNST as required by the National Trails System Act and implemented through E.O. 13195 (Trails for America in the 21st Century), the CDNST Comprehensive Plan, and FSM policy. In addition, I object to the Plan's failure to identify and evaluate alternative and capable locations for the CDNST MA 3.6 through NEPA processes. Map 41 identifies high potential route segments that help define capable MA 3.6 corridor locations. A principle consideration is that the CDNST MA corridor location must avoid developed areas such as MA 5.1, "...to the extent practicable, efforts be made to avoid activities incompatible with the purposes for which such trails were established" (16 U.S.C. 1246(c)).

In addition, responses to public comments are inconsistent with 40 CFR 1503.4 requirements.

How the proposed Plan decision may be improved. The principle role of a Plan, in regards to the requirements of 36 CDR 219.2, is to identify the optimum location for the CDNST corridor and then protect the CDNST corridor to achieve the nature and purposes of this National Scenic Trail. Submitted comments on the Draft Plan and DEIS recommend improvements to the Plan—see **Attachment A**. One approach to improve the Plan at this time would be to initiate the development of a Supplemental Draft Environmental Impact Statement that was devoted to the evaluation of alternative MA 3.6 corridor locations. The proposed MA management direction would be modified to be associated with and clearly support the nature and purposes goals and desired conditions of the CDNST. A key consideration is that the rights-of-way requirement of 16 U.S.C. 1246(a)(2) is directed at selecting the 3,100-mile CDNST corridor and does not modify the nature and purposes of the CDNST. Due to Forest Service concerns about the relationship of programmatic corridor and site-specific project planning processes, it may be necessary to apply revised CDNST MA 3.6 management direction to all of the potential CDNST corridors until such time that the CDNST unit plan (FSM 2353.44b part 2) is complete and the travel route is officially located. **Appendix A** of this objection describes recommendations in detail.

How the Plan (and FEIS) is inconsistent with law, regulation or policy.

In general, the Plan is inconsistent with the National Trails System Act (16 U.S.C. 1241 - 1251) and policies established thereunder; the National Environmental Policy Act including, but not limited to range of alternatives (40 CFR 1502.14), inaccurate description of the environment of the area (40 CFR 1502.15), and not disclosing effects (40 CFR 1502.16); and, the National Forest Management Act as implemented through the 1982 Planning Rule (36 CFR 219.2).

The National Trails System Act provides the framework for locating and managing National Scenic Trails, such as to be “so located as to provide for maximum outdoor recreation potential and for the conservation and enjoyment of the nationally significant scenic, historic, natural or cultural qualities of the areas through which such trails may pass” (16 U.S.C. 1242 (a)(2)). In addition, the National Trails System Act directs avoiding, to the extent possible, activities along the CDNST that would be incompatible with the purposes of the CDNST for which it was established (16 U.S.C. 1246(c)). In achieving these objectives, the Secretary of Agriculture is directed to prepare a comprehensive plan for the CDNST to address management and use (16 U.S.C. 1244(f)). A comprehensive plan has been duly adopted that establishes a framework for staged (stepped-down) decisions to address National Trails System Act requirements (74 Fed. Reg. 51116, Oct. 5, 2009 and CDNST Comprehensive Plan, Chapter III.E, page 6.)

The Comprehensive Plan, page 4, describes the nature and purposes of the CDNST as follows: “The nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor.”

To provide context for this statement, it refers to various documents, including the 1976 Study Report that views the Trail as “a simple facility for foot and horseback use in keeping with the National Scenic Trail concept as seen in the Appalachian and Pacific Crest Trails” and a policy memorandum expressing “the intent of the Forest Service that the CDNST will be for non-motorized recreation.” In addition, the formulation of the nature and purposes direction for the CDNST was developed through a public process (36 CFR 216) and approved by Associate Chief Hank Kashdan as documented in Federal Register: October 5, 2009 (74 FR 51116). The values of National Scenic Trails include: (1) primitive visitor experience opportunities and settings, and (2) the conservation/protection of scenic, natural, historical, and cultural qualities of the corridor. Additional detail is provided in the “Background Supporting the Objection” section of this document titled, “[CDNST Nature and Purposes.](#)”

The process for locating CDNST segments includes the preparation of a location report that is to include not only the location of the travel route, but (among other things) the management direction for the CDNST corridor “as described in the applicable land and resource management plans and CDNST related site-specific plans.” The direction in the Plan should lead to selection of the rights-of-way by the Chief (CDNST Comprehensive Plan Chapter III.F.2.b., page 7).

The planning process is inconsistent with the 1982 Planning Rule and NEPA including: (1) 36 CFR 219.2 since the CDNST management direction was not adequately integrated into the planning process, (2) 36 CFR 219.11 and 36 CFR 219.12 since alternatives did not address appropriate management direction and determine an optimum location for the CDNST, (3) 40 CFR 1502.14 since reasonable alternatives were not rigorously explored and objectively evaluated, and (4) 40 CFR 1502.8 since the CDNST management direction is confusing and not fully integrated into the Plan and FEIS. These concerns were communicated in comments on the

Draft Plan and DEIS with the exception of the last point which arose as I reviewed Forest Service responses to public comments.

The Record of Decision (ROD) should add a discussion in “Components of My Decision” that addresses the requirement of additional planning for special areas, including the CDNST (36 CFR 219.2(a)). The management direction in the Plan must identify goals and desired conditions that reflect the nature and purposes of this National Scenic Trail. In addition, standards must set degradation limits or thresholds that prevent resource development and visitor use from substantially interfering with CDNST nature and purposes. The ROD states, “I am establishing management direction for the following national trails: Continental Divide National Scenic Trail Corridor.” Unfortunately, the CDNST management direction in the Plan and the corridor location does not provide for the nature and purposes of the CDNST and hence is legally flawed.

The ROD states, “The interdisciplinary team used prior management experience, existing laws and regulations guiding National Forest System management, and public input when designing the alternatives considered in detail.” The ROD describes in, “Special area and designations” that the “Management for two national trails, the Continental Divide National Scenic Trail and the Nez Perce National Historic Trail, is incorporated into the revised LMP with direction consistent with the respective comprehensive trail plans.” As described in this objection, I believe that the Forest Supervisor did not adequately address the planning requirements of the National Trails System Act, NFMA, and NEPA. The Plan is not compliant with the National Trails System Act and E.O. 13195 (Trails for America in the 21st Century) providing for the protection of CDNST values.

Part 7. Link between prior substantive formal comments and the objection.

Comments expressed concerns regarding implementation of the CDNST Comprehensive Plan and FSM 2353.4 direction, inadequacy of the Management Area direction for the CDNST, the location of the CDNST MA corridor, and flawed NFMA and NEPA processes. Planning process issues were identified in comments, including 36 CFR 219.2, CDNST Comprehensive Plan, FSM 2353.4, and E.O. 13195. Also, NEPA issues were identified including, alternatives considered, affected environment description of the CDNST, incorporating a 1998 travel route decision, and assessing and disclosing effects of various CDNST corridor alternatives. These concerns are addressed in submitted comments—see **Attachment A**.

The overarching CDNST issues raised in formal comments can be summarized as follows:

- Evaluating alternative locations for the CDNST MA corridor, including along the following geographic locations: Sheridan Pass, Lava Mountain, Two Ocean Mountain, Togwotee Pass, and Brooks Lake, which is a reasonable and capable location for the CDNST MA corridor that needs to be rigorously explored and objectively evaluated.
- Regardless of the selected MA corridor, once established, the nature and purposes of the CDNST are to be protected to the extent practicable by adopting appropriate management

direction for the corridor—standards and guidelines must be associated with and supportive MA 3.6A goals and objectives that reflect the nature and purposes of the CDNST. An example of adequate MA 3.6 management direction was provided in comments.

This letter of objection includes certain observations and analysis that were not included in prior comments, these are specific concerns that arose as I reviewed Forest Service responses to public comments. These concerns are addressed in **Appendix B** of this objection.

Sincerely,

G. A. Warren

APPENDIX A – Improving the CDNST Management Direction and MA Corridor Location

Preface

The introduction to Chapter 2 Management Area (MA) direction should refer to FSM 1110.8 – Degree of Compliance or Restriction for an explanation of the management direction in the Plan. The ROD needs to be edited to include the “imperative mood” in the discussion of degree of compliance.

CEQ mandates clear writing to assure full and honest disclosure of potential impacts to all affected and interested parties. Full and honest disclosure of impacts is impossible if the writing that summarizes relevant information is so unclear that readers miss key points—see 40 CFR 1502.8 for writing requirements.

Regarding the CDNST, the commingling (overlapping) and often disparate management direction for various MAs that apply to the CDNST corridor in the revised Plan is highly confusing. This overlapping CDNST management direction is found in the following MAs: 3.3A, 3.3B, 3.5A, 3.5B, 3.6A, 4.2, 4.3, and 5.1. In addition, MA maps do not display the relationship between MA 3.6A and other MAs. It is important to show the CDNST MA corridor location on Maps A, J, K, G, and O in the final Plan and FEIS documents. The term that the “most restrictive” direction applies is not defined yet this concept is critical to the implementation of commingled CDNST direction. I do not believe that the FEIS (and revised Plan) meets the requirement of 40 CFR 1502.8—Writing.

Suitable Uses – Recreation Opportunities, Roads, and Trails

Revised Plan Language, Table 22, Page 121, 3.6A Continental Divide National Scenic Trail:

- **Non-motorized bicycles** - Yes, outside wilderness where it does not interfere with the nature and purposes of the Trail
- **Wheeled motorized on designated routes³** - Yes, outside wilderness where it does not interfere with the nature and purposes of the Trail
- **Over-snow motorized** - Yes, outside wilderness where it does not interfere with the nature and purposes of the Trail and may be restricted in big game crucial winter range
- **National Forest System road construction** – No, unless needed to honor existing rights; suitability direction applies, except when 2001 Roadless Area Conservation Rule direction is more restrictive.
- **Temporary road construction** – Yes, Suitability direction applies, except when 2001 Roadless Area Conservation Rule direction is more restrictive. See inventoried roadless section for direction and discussion on new roads in the inventoried roadless

³ I will assume that the term “designated route” refers to the Travel Management Rule (36 CFR 212) and not the legislative designation of the CDNST in 1978.

areas.

- **Motorized trail construction - No**

Observations and analysis – Suitable use direction does not reflect the totality of the direction in the Comprehensive Plan and Policy. More complete descriptions and discussions follow:

- **Non-motorized bicycles** – Bicycle use may be allowed on the CDNST (16 U.S.C. 1246(c)), using the appropriate trail design standards, if the use is consistent with the applicable CDNST unit plan and will not substantially interfere with the nature and purposes of the CDNST (FSM 2353.42). See FSM 2353.44b parts 2 and 10.
 - **Wheeled motorized on designated routes** - Motor vehicle use by the general public is prohibited on the CDNST, unless that use is consistent with the applicable CDNST unit plan and:
 - a. Is necessary to meet emergencies;
 - b. Is necessary to enable adjacent landowners or those with valid outstanding rights to have reasonable access to their lands or rights;
 - c. Is for the purpose of allowing private landowners who have agreed to include their lands in the CDNST by cooperative agreement to use or cross those lands or adjacent lands from time to time in accordance with Forest Service regulations;
 - d. Is on a motor vehicle route that crosses the CDNST, as long as that use will not substantially interfere with the nature and purposes of the CDNST (FSM 2353.42);
 - e. Is designated in accordance with 36 CFR Part 212, Subpart B, and:
 - (1) The designated vehicle class and width were allowed on that segment of the CDNST prior to November 10, 1978, and the use will not substantially interfere with the nature and purposes of the CDNST (FSM 2353.42) or
 - (2) The designated segment was constructed as a road prior to November 10, 1978....
- FSM 2353.44b parts 2 and 11. Executive Orders 11644 and 11989 are also applicable.
- **Over-snow motorized** - Motor vehicle use by the general public is prohibited on the CDNST, unless that use is consistent with the applicable CDNST unit plan and is allowed in accordance with 36 CFR Part 212, Subpart C, and the use will not substantially interfere with the nature and purposes of the CDNST (FSM 2353.42). See FSM 2353.44b parts 2 and 11. Executive Orders 11644 and 11989 are also applicable.
 - **Temporary road construction** – Allowing temporary road construction would be an inconsistency in Primitive and Semi-Primitive Non-Motorized ROS classes. Direction in the CDNST unit plan may be applicable (FSM 2353.44b part 2).

Improving the Plan direction for Suitable Uses for roads and trails– replace the direction in Table 22 with the following:

- **Non-motorized bicycles** - No, unless addressed and approved in an applicable CDNST unit plan.
- **Wheeled motorized on designated routes** – No, unless addressed and approved in an applicable CDNST unit plan (and the use is consistent with FSM 2353.44b part 11).
- **Over-snow motorized** - No, unless addressed and approved in an applicable CDNST unit plan (and the use is consistent with FSM 2353.44b part 11).
- **National Forest System road construction** – No, unless needed to honor valid existing rights or the access is consistent with the CDNST unit plan.
- **Temporary road construction** – No, unless consistent with the CDNST unit plan.

MA 3.6A Theme

Revised Plan Language, Page 160:

The Continental Divide National Scenic Trail (Trail) is managed to provide recreation opportunities in a natural appearing landscape consistent with the Continental Divide National Scenic Trail Comprehensive Plan (USDA Forest Service 2009).

Observations and analysis:

Identifying a “theme” is not required by the 1982 Planning Rule. However, the theme as presented does not address conserving resources along the CDNST.

Improving the Plan direction for Theme:

Include a discussion of conserving natural, historic, and cultural resources along the CDNST corridor.

MA 3.6A Setting

Revised Plan Language:

The Trail was established by Congress through the National Parks and Recreation Act of 1978, which amended the National Trails System Act of 1968.

The Trail generally follows the corridor described in the Bureau of Outdoor Recreation’s 1976 Study Report and the 1977 Final Environmental Statement. A 50-mile corridor was identified on either side of the continental divide in which to locate the final route. On the Shoshone, this was accomplished by establishing the route in a 1998 decision notice and finding of no significant impact (USDA 1998). This decision recognized that the Trail should be managed for pedestrian and horse traffic, but located some segments on existing roads in order to build as little new trails as possible and avoid sensitive wildlife habitat.

Currently, the Trail follows a mixture of non-motorized and motorized primitive roadways. Motorized use is allowed to the extent that occurred in 1998. As the Trail is developed further, it is expected that the entire length of the Trail on the Shoshone will be located off roads. This management area includes the corridor within 0.5 mile of centerline of the Trail location (See Map O).

The landscape has a predominantly natural appearance that may have subtle modifications that would be noticed, but not draw the attention of someone traveling through the area.

Observations and analysis:

The following statement that, “motorized use is allowed to the extent that it occurred in 1998” describes policy that is inconsistent with the National Trails System Act, the Comprehensive Plan, and FSM 2353.44b part 11. The CDNST was designated by Congress in 1978; this date is a determinate for allowing certain limited use of motor vehicles, which is described in the Comprehensive Plan and policy.

Reference to a 50-mile corridor is in error and is not found in the 1976 or 1977 documents. Instead, the 50-mile reference is found in the Comprehensive Plan Chapter IV.B.2.b.1 and 2.

b. Policy

...(2) The "zone of concern" regarding the location of the CDNST is that area of the Rocky Mountains laying 50 miles either side of the geographical Continental Divide. The establishment of the zone of concern for the CDNST is to be used to aid in compliance with 16 U.S.C. 1246 (a) and (b). The establishment of this zone in itself will not dictate the management practices and uses of the lands involved....

The Shoshone Forest Supervisor was a cosigner of a Decision Notice in 1998 for an EA titled, “[Final route Selection, CDNST From South Pass to Yellowstone NP.](#)” The purpose and need describes, in part, “identifying the final route for this segment of the trail implements that law {PL 95-625} and the comprehensive plan for the Continental Divide Trail, which was approved in 1985....” However, this Forest Supervisor decision should not be used as the key basis for identifying the CDNST MA corridor for the following reasons:

- The 1985 comprehensive plan for the CDNST was legally flawed and was replaced in 2009 with direction is consistent with the NTSA and Study Report identifying the nature and purposes of the CDNST, addressing restrictions on motor vehicle use, and for other purposes. These significant changes are discussed in: [Federal Register - Notice of Final Amendments to Comprehensive Plan and Final Directives](#) - Approved by Associate Chief Hank Kashdan, Vol. 74, No. 191, Monday, October 5, 2009
- The 1998 Decision was inconsistent with [correspondence](#) from the Deputy Chief in 1997 regarding motor vehicle use of the CDNST.

- The 1998 decision was solely about identifying a travel route for the CDNST without (1) addressing the optimum location of the CDNST MA corridor and (2) establishing management direction to provide for the nature and purposes of the CDNST, including establishing protected corridor management direction that would provide for the conservation of resources including sensitive wildlife species.
- The 1998 decision was never transmitted to the Chief for approval (CDNST Comprehensive Plan, Chapter III.F – Process for Locating CDNST segments).
- The Forest Supervisor did not have the decision authority to locate the CDNST corridor or travel route.

The following statement is not factual: “The landscape has a predominantly natural appearance that may have subtle modifications that would be noticed, but not draw the attention of someone traveling through the area.” Instead, the description should describe that the current travel route location is found extensively in timber management areas, on improved roads, and on motorized trails and landscapes—see the embedded photo. A capable area for the CDNST MA

corridor and an associate CDNST travel route is found in the vicinity of the following landscape areas: Sheridan Pass, Lava Mountain, Two Ocean Mountain, Togwotee Pass, and Brooks Lake—this route is along the divide and favors more primitive



ROS settings. The boundary of the MA should follow topographic features to the extent possible, while being at least one-half mile wide on each side of the CDNST high potential route segment.

Improving the Plan direction for Setting:

I believe that a Supplement DEIS needs to be issued that fully analyzes the affected environment of the capable MA 3.6 corridors that would correspond to the lines on Map 41 of the FEIS. In turn, the affected environment discussion from the selected alternative could be paraphrased here.

MA 3.6A Desired Conditions

Revised Plan Language:

The Trail provides a high quality scenic, primitive hiking and pack and saddle stock experience. A variety of compatible non-motorized recreation opportunities are provided. Access to the Trail is primarily by foot, horseback, or other non-motorized means. Roads and motorized trails are not present except at designated crossings.

The Trail corridor is characterized by a predominantly natural appearing environment. Improvements such as trailheads, trails, signs, bridges, and fences that enhance the recreation opportunities may be present. Evidence of past and present resource management may exist, but blends with the natural appearance of the landscape. Vegetation alterations may be present to enhance viewing opportunities.

Concentrations of users are low and opportunities for solitude and exercising outdoor skills are present. The Trail provides challenging hiking and horseback riding opportunities.

Ecological processes such as fire, insects, and diseases exist. The potential to view wildlife is high.

Observation:

The description in the revised Plan adequately summarizes desired ROS conditions for the CDNST MA corridor. However, desired conditions should also describe conserving natural, historic, and cultural resources along the CDNST corridor.

Improving the Plan direction for Desired Conditions:

The description could be improved by adding, “conserving natural, historic, and cultural resources along the CDNST corridor.” In addition, the comprehensive planning requirements in FSM 2353.44b part 2 for a CDNST unit plan should be referenced.

Goals for Management Area 3.6A

Revised Plan Language, page 161:

Provide high-quality scenic, primitive hiking, and horseback riding opportunities while conserving natural, historic, and cultural resources along the Trail corridor.

Relocate the Trail off motorized routes.

Observations and analysis: The first Goal does not quote the CDNST nature and purposes statement, which could lead to confusion. The second goal inappropriately biases future decisions of always moving the CDNST travel route as opposed to managing motorized vehicle use to address the comprehensive plan requirements and FSM policy (Comprehensive

Plan, Chapter IV.B.6 and FSM 2353.44b part 11). The relocation direction is also problematic since the MA direction is for the corridor and could be interpreted as allowing motor vehicle use in the CDNST MA without addressing the use in the CDNST unit plan, which would be inconsistent with policy (FSM 2353.44b parts 2 and 11).

Improving the Plan direction for Goals:

The Plan would be improved if the CDNST nature and purposes statement was used replacing the first goal with the following: “The nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor” (CDNST Comprehensive Plan and FSM 2353.42).

The Plan would be improved if the second goal was broaden to allow for both relocation of the travel route and managing motor vehicle use as per Comprehensive Plan and FSM direction, including the direction to prepare a CDNST unit plan.

Objectives for Management Area 3.6A

Revised Plan Language for Objectives – Objectives are not identified:

Observations and analysis: The CDNST was designated by Congress on November 10, 1978. However, after 35 years comprehensive planning for the CDNST is incomplete. The site-specific elements of CDNST planning are to be addressed through the completion of a CDNST unit plan (FSM 2353.44b part 2). MA 3.6A objectives are needed to help ensure that the CDNST unit plan and any new CDNST travel route segments are completed during planning period.

Improving the Plan direction by adding objectives:

- Complete the CDNST Unit Plan within three years (FSM 2353.44b part 2).
- Complete the CDNST travel route through MA3.6A within eight years.

These activities should also be included in the Plan Appendix 2—possible actions.

Standards for Management Area 3.6A

Revised Plan Language for Standards, page 162:

Special Uses

- Allow competitive events that do not interfere with the nature and purposes of the Trail.
- Allow non-motorized outfitter and guide activities that do not interfere with the nature and purposes of the Trail.
- Allow guided over-snow and winter activities that do not interfere with the nature and purposes of the Trail.

Recreation

- Snowmobile use is allowed. New sections of the Trail shall not be located coincidentally with snowmobile trails.
- Where possible, new or relocated sections of the Trail shall be located within areas mapped with a recreation opportunity spectrum setting of primitive or semi-primitive non-motorized.

Roads and trails

- The Trail will be moved off existing motorized routes, if the motorized use becomes incompatible with management of the Trail.

Minerals

- Mineral leases shall include a stipulation of no surface occupancy.

Observations and analysis:

These standards inappropriately compel action to issue special permits and provide for snowmobile use without addressing direction for:

1. Considerations for issuing special use permits (FSM 2720 and FSH 2709.11),
2. Addressing the requirements of FSM 2353.44b part 11 for allowing motor vehicle use,
3. Assuring that the special uses are compatible with the nature and purposes of the CDNST (Comprehensive Plan, Chapter IV.B.7.c, page 21), and
4. Conducting NEPA site-specific analyses as addressed in the CDNST unit plan (including determining [carrying capacity](#)), and Executive Orders 11644 and 11989.

The MA 3.6A standards are not associated with MA 3.6A Goals and Desired Conditions with the exception of minerals. The structure of the MA management direction is inconsistent with providing for the CDNST special area (36 CFR 219.2) and plan content (36 CFR 219.11(c)).

Establishing (adopting/prescribing) a desired ROS class for MA 3.6A is a fundamental

requirement of forest planning if the nature and purposes of the CDNST are to be achieved. On the Shoshone National Forest, the established CDNST MA 3.6 ROS class should be Semi-Primitive Non-Motorized. The CDNST travel route is to be located within the CDNST MA, so the standard to locate the route in Primitive or Semi-Primitive areas would not be necessary or moot.

Improving the Plan direction for Standards: The following standards provide management direction that support MA 3.6A goals, desired conditions, and the nature and purposes of the CDNST.

Scenery

- The CDNST travel route is a Concern Level 1 Travelway. All management activities in the foreground of the travel route are to meet the Scenic Integrity Objective of High or Very High. The Scenic Integrity Objectives in the middleground viewshed is to be High, Very High, or Moderate.

Recreation

- Manage for the ROS settings of Primitive or Semi-Primitive Non-Motorized social encounter levels as described in Table 25 for these two classes.
- Manage the CDNST to provide high-quality scenic, primitive hiking and pack and saddle stock opportunities. Backpacking, nature walking, day hiking, horseback riding, nature photography, mountain climbing, cross-country skiing, and snowshoeing are compatible with the nature and purposes of the CDNST (FSM 2353.42 and FSM 2353.44b part 8).
- Motor vehicle use is allowed if such use is in accordance with the CDNST Comprehensive Plan Chapter IV.B.6 and FSM 2353.44b part 11, and as addressed and approved in the CDNST unit plan (FSM 2353.44b part 2).
- Activities, uses, and events that require a special use permit shall not be authorized unless the activity, use, or event contributes to achieving the nature and purposes of the CDNST.

Travel Routes

- Construction, reconstruction, and maintenance of the CDNST travel route shall be for the designed use of Trail Class 3, Pack and Saddle Stock.
- Road construction and reconstruction is prohibited; excepted are those circumstances described in CDNST Comprehensive Plan Chapter IV.B.6, page 19, and FSM 2353.44b part 11, and addressed and approved in the CDNST unit plan.

Timber Management

- Timber harvest is not scheduled and does not contribute to the allowable sale quantity. Lands are not suitable for timber production.

Minerals

- Mineral leases are to include stipulations for no surface occupancy.
- Permits for the removal of mineral materials are not issued.

Other Uses Considerations

- Other uses (e.g., vegetation, lands, and recreational) along the CDNST are only allowed where there is an analysis and determination that the other use would not substantially interfere with the nature and purposes of the CDNST (16 U.S.C. 1246(c)).

Guidelines for Management Area 3.6A

Revised Plan Language for Guidelines, page 162:

Vegetation

- Allow the cutting or removal of trees under circumstances such as reducing fuel loads and fire risk, especially adjacent to private land; curtailing an imminent threat of insect attack; salvaging dead trees to enhance a scenic view from a prominent overlook; or maintaining wildlife habitat diversity or maintenance of existing facilities.

Recreation

- Manage for the recreation opportunity spectrum class of the management area in which the Trail occurs (Table 25).
- Signing and trail marking should follow direction in the Continental Divide National Scenic Trail Comprehensive Plan (USDA Forest Service 2009).

Scenery

- Manage for the scenic integrity objective of high to very high.

Observations and analysis:

The “guideline” for vegetation is crafted as a standard and inappropriately compels action without following the requirements of the CDNST Comprehensive Plan regarding providing for nature and purposes of the CDNST and NEPA for site-specific analyzes. The degree of compliance direction for Scenery is crafted as a standard and should reside in the standards section; although, I believe that the Plan direction is inconsistent with law. See FSM 1110.8 for degree of compliance direction.

The recreation guideline to, “Manage for the recreation opportunity spectrum class of the management area in which the Trail occurs” is inappropriate for Semi-Primitive Motorized and Road Natural ROS settings do not support MA 3.6A Goals, Desired Conditions, and the nature and purposes of the CDNST. Semi-Primitive Motorized and Road Natural settings would inappropriately promote or allow other uses that would substantially interfere with the nature and purposes of the CDNST. MA 3.6A needs to establish (prescribe/adopt) a standard

for the CDNST MA 3.6A to provide for a Semi-Primitive Non-Motorized classes to the extent practicable.

Table 25, “Recreation opportunity spectrum standards for Management Area 3.6A” is described as a standard (imperative mood and in the title), but the direction is found under guidelines, which is ambiguous. In addition, Semi-Primitive Motorized and Roaded Natural settings on the Shoshone National Forest do not provide for the nature and purposes of the CDNST. Other elements of the ROS settings include: access, remoteness, naturalness, facilities and site management, visitor impacts, and visitor management; these are elements that are not covered in the management direction for MA 3.6A. The CDNST unit plan will further address the comprehensive planning requirements of the National Trails System Act (16 U.S.C. 1244(f)), including addressing [carrying capacity](#).

Improving the Plan direction for Guidelines: The following guidelines provide management direction that support or are compatible with MA 3.6A goals, desired conditions, and the nature and purposes of the CDNST.

Vegetation

- Vegetation may be altered through timber harvest or fire (prescribed or wildfire use) to enhance recreation opportunities, to provide vistas to view surrounding areas, and to conserve natural, historic, and cultural resources.
- Vegetation may be altered to maintain or improve threatened, endangered, and sensitive species habitat.

Visitor Services

- Partners and volunteers may assist in CDNST programs.

Management approach

Revised Plan Language for Management Approach, page 163:

Management of uses within this specific recreation setting focuses on sustainability and providing high-quality non-motorized experiences, especially within 0.5 mile of the Trail’s travel route.

If existing uses are, or become, incompatible with the nature and purposes of the Trail, management of the Trail will be reexamined. In the case of wheeled motorized conflicts, the management approach will generally be to move the Trail route to a location that is non-motorized. If conflicts occur within sections open to winter motorized use or mountain bicycle

use, any approach taken to resolve the conflict will generally favor allowing the continuation of uses that predated designation of the Trail. Motorized use by the public on relocated sections of the Trail will generally be prohibited, with the exception of a special circumstance. The Trail will not be relocated onto motorized routes.

High economic values are generally not prevalent, but when threatened by wildfire, management actions to mitigate the effects or prevent loss are developed and implemented. Resource benefit objectives can often be achieved through using wildland fire. Both wildfire and prescribed fire are used to achieve and maintain vegetation conditions and desired fuel levels. While an initial response to unplanned ignitions in the management area favors consideration of managing fire to accomplish resource benefit objectives, the likelihood of managing a narrow corridor fire is unrealistic. The only opportunity for resource benefits from fire will be when the adjacent management area also allows it.

The management area is broad enough to protect natural, scenic, historic, and cultural features to provide for the nature and purposes of the Trail.

If portions of the trail are relocated, the scenery direction for this management area will take precedence over the scenery direction for the mapped management area direction which is overlaid by the Trail corridor. In addition the scenery direction from where the trail was relocated will revert to the mapped management area direction for that location.

Other guidance

Continental Divide National Scenic Trail Comprehensive Plan (USDA Forest Service 2009)

Observations and analysis:

This section is not required by the 1982 Rule. Therefore, I would characterize the discussion as informal guidance. However the discussion in paragraph 2 is misleading and needs to be deleted. The formal guidance to address the issues is found in Plan goals, desired conditions, objectives, standards, guidelines, and monitoring. The formal guidance for addressing many of the site-specific issues is found in FSM 2353.44b parts 3 through 11 and will be resolved in the development of the CDNST unit plan (FSM 2353.44b part 2).

Improving the Plan direction for Management Approach:

Reference the development of the CDNST unit plan, which would alert managers and the public that site-specific planning is required to address CDNST Comprehensive Plan requirements and to prescribe site-specific visitor use management practices. Other wording

that may be beneficial follows:

Partnerships and volunteers are sustained or sought to lead and assist in CDNST programs. Volunteer and cooperative agreements will be developed with those volunteers and private organizations that are dedicated to planning, developing, maintaining, and managing the CDNST in accordance with Sections 2(c), 7(h)(1), and 11 of the NTSA.

The direction in the NTSA, E.O. 13195, 2009 CDNST Comprehensive Plan, FSM 2310, FSM 2353.4, and FSM 2380 are used to guide the development and management of the CDNST. The CDNST unit plan provides site-specific guidance (FSM 2353.44b part 2).

The above recommendations for improving the MA 3.6A direction are similar to and consistent with that established for the Appalachian National Scenic Trail—see **Attachment B**; recommendations found in the U.S. Forest Service comments submitted on the draft BLM Lander Resource Management Plan and DEIS—see **Attachment C**; and BLM Manual [MS-6280](#)—Management of National Scenic and Historic Trails, Chapter 4—Congressionally Designated National Trails - Land Use Planning, pages 4-1 through 4-19.

APPENDIX B - Analysis of Responses to Public Concerns in FEIS (40 CFR 1503.4)

The following “**Observations and analysis**” address responses to comments that I submitted on the draft Plan and DEIS, and concerns that arose after formal comment due to the Forest Service responses. In addition, responsiveness to 40 CFR 1503.4 is summarized.

Subject 450 – MA 3.6A – CDNST, Public Concern #76, Page 736:

The Forest Service should consider the following: 1- North of Brooks Lake motorized winter use must conform to paragraph IV.B.6b (6) of the Comprehensive Plan; 2- Brooks Lake through U.S. 26/287 corridor motorized vehicle use must conform to paragraph IV.B.6b of the Comprehensive Plan; 3- Sheridan Pass to Leeds Creek motorized winter use must conform to paragraph IV.B.6b of the Comprehensive Plan; 4- Brooks Lake to U.S. 26/287 Corridor neither motorized nor mechanical (bicycle) use should be authorized at any time; 5- Pelham Lake to Sheridan Pass motorized winter use must conform to paragraph IV.B.6b(6) of the Comprehensive Plan.

FS Response:

Winter motorized use and bicycle use on the Continental Divide National Scenic Trail (CDNST) is consistent with the 2009 Comprehensive Management Plan. Snowmobile use is allowed on the CDNST where it is consistent with the applicable land management plan; is allowed in accordance with 36 CFR Part 212, Subpart C, on National Forest System lands or is allowed on public lands; and the use will not substantially interfere with the nature and purposes of the CDNST. Bicycle use is also allowed on the CDNST (16 U.S.C. 1246c) if the use is consistent with the applicable land and resource management plan and will not substantially interfere with the nature and purposes of the CDNST. The nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor. Both limited winter snowmobile use and mechanical (bicycle) use do not interfere with this nature and purpose.

Observations and analysis:

- The response does not address CDNST unit plan requirements regarding motor vehicle and bicycle use (FSM 2353.44b parts 2, 10, and 11). The statement that “both limited winter snowmobile use and mechanical (bicycle) use do not interfere with this nature and purpose” is not supported with either programmatic (FEIS, Vol.1, Chapter 3, pages 501-558) or site-specific analyses that meet the requirements of 36 CFR 219.12(g), 36 CFR 219.21(g), and 40 CFR 1502.24 and should be deleted from the FS response. Such use would be addressed in the CDNST unit plan that in part assesses [carrying capacity](#) (FSM 2353.44b part 2).

Subject 450 – MA 3.6A – CDNST, Public Concern #105, Page 736:

The Forest Service should make the following changes to the Forest Plan and DEIS: (1) On page 120 of the Plan under Management Area acres, identify the acres associated with MA 3.6A and 3.6B (2) On page 475 of the DEIS, Executive Order 13195 is not listed, add Executive Order 13195.95. (3) On page 476 of the DEIS, list the Continental Divide National Scenic Trail (CDNST) Comprehensive Plan as an Other Authority (FSM 2353.01d). (4) The Forest needs to follow the direction in the 2009 CDNST Comprehensive Plan Chapter III and FSM 2353.42 and 2353.44(b) Part 1 to provide for the management and development of the CDNST. (5) On Page 480 of the DEIS, FSM 2353.44 references need to be completed. (6) On Page 496 of the DEIS, effects need to be disclosed for other potential CDNST MA corridors. (7) The proposed CDNST MA 3.6 MA directions do not provide for the nature and purposes of the CDNST and needs to be modified. (8) On page 506 of the DEIS, a Supplemental Plan and DEIS may be need to be completed in order to address cumulative effects based on MA 3.6A direction. (9) The Forest should address the needs for volunteer work on the CDNST in the Forest Plan. (10) Forest Service should address the discrepancy displayed in Table 23 on page 126 and the standard and guidelines for the management area and should consider removing “may be restricted in big game crucial winter range because over-the-snow vehicles are an exception in crucial winter range” (11) The Forest Service should address the last paragraph of the affected environment section for the CDNST (page 480) and consider changing it to “The management area emphasis for the CDNST corridor will determine the appropriate scenery objective and recreation opportunity spectrum class. Therefore alternatives will be analyzed using the Scenery Management and Recreation Opportunity Spectrum systems”. (12) The Forest Service should consider addressing the CDNST on Page 558 under scenery resources similar to the discussion provided for scenic byways because scenery is not adequately addressed.

FS Response:

(2) Executive order 13195 which furthers the purposes of the National Trails System Act of 1968, as amended (16 U.S.C. 1241–1251), the Transportation Equity Act for the 21st Century (Public Law 105-178), and other pertinent statutes, to achieve the common goal of better establishing and operating America's national system of trails will be added to the DEIS.

(4) The management area direction, standards, and guidelines in the Plan comply with both the 2009 CDNST Comprehensive Management Plan and FSM 2353.42 and 2353.44(b) part 1.

(6) Analysis of the potential re-routes of the CDNST is a site-specific analysis that is inappropriate for this revised forest Plan analysis. If these potential re-routes move forward a site-specific analysis will be done to analyze the effects of the new corridor.

(7) The MA 3.6A Plan direction through appropriate standards and guidelines, desired condition, and the management approach does provide for the nature and purposes of the

CDNST which is to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor.

(8) The cumulative effects for the CDNST are addressed in the DEIS recreation section. If any potential re-routes are moved forward, then they will be analyzed site-specifically at that time, and if needed, the Plan would then be amended to incorporate MA 3.6A direction to a new corridor.

(12) The desired condition for scenery is addressed for the CDNST by identifying that the desired Scenic Integrity Objective (SIO) is high to very high depending on the trail segment. The alternatives were then analyzed based on the acres of MA 3.6A within the corridor that met a high to very high SIO. These ranged from alternative C which had the most acres in high and very high at 50 percent to alternative E which had the least acres in high and very high at 24 percent.

Observations and analysis:

- Regarding response (2), the correct citation for E.O. 13195 is Trails for America in the 21st Century: “By the authority vested in me as President by the Constitution and the laws of the United States of America, and in furtherance of purposes of the National Trails System Act of 1968...and to achieve the common goal of better establishing and operating America's national system of trails, it is hereby ordered as follows: Section 1... Federal agencies will, to the extent permitted by law and where practicable ... protect, connect, promote, and assist trails of all types throughout the United States. This will be accomplished by: ... (b) Protecting the trail corridors associated with National Scenic Trails...to the degrees necessary to ensure that the values for which each trail was established remain intact....”
- The statement, “(4) the management area direction, standards, and guidelines in the Plan comply with both the 2009 CDNST Comprehensive Management Plan and FSM 2353.42 and 2353.44(b) part 1” is not factual. Instead the management direction should be described as being inconsistent with law, the CDNST Comprehensive Plan, and policy as discussed in Appendix A of this document. The FS response is not supported by legitimate reasons being in violation of 40 CFR 1503.4(a) part 5.
- The statement, “(6) analysis of the potential re-routes of the CDNST is a site-specific analysis that is not appropriate for this revised forest Plan analysis. If these potential re-routes move forward a site-specific analysis will be done to analyze the effects of the new corridor” would be accurate if the contention was about identifying the CDNST travel route once the CDNST MA 3.6A is located. However, my comment addressed locating the CDNST MA corridor along the high potential route segments that are represented by the lines identified on Map 41 of the FEIS. In addition, the statement “if these potential re-routes move forward a site-specific analysis will be done to analyze the effects of the new corridor” is inconsistent with the Comprehensive Plan direction for staged decisions, FSM 2353.42, and FSM 2353.44b

part 1. Map 41 depicts several capable MA corridor locations that are required to be addressed in the FEIS for these are reasonable alternative locations for the CDNST corridor. It is implied in the response that a site-specific assessment for the CDNST travel route is necessary prior to evaluating Forest Plan alternatives for capable CDNST MA corridor areas, which is inconsistent with 36 CFR 219.2(a) for the integration of the CDNST, the Comprehensive Plan direction for staged decision making (Chapter III.E, FSM 2353.44b part 1, and 40 CFR 1502.14). The FS response did not follow the guidance in 40 CFR 1503.4(a) parts 2 and 3.

- The statement, “(7) The MA 3.6A Plan direction through appropriate standards and guidelines, desired condition, and the management approach does provide for the nature and purposes of the CDNST which is to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor” is not factual. For example, MA 3.6 does not establish (prescribe/adopt) standards to address appropriate ROS class setting indicators and thresholds that provide for the nature and purposes of the CDNST. Appendix A of this document describes concerns with the Plan direction. The FS response did not follow the guidance in 40 CFR 1503.4(a) parts 1 through 4.
- The statement, “(8) the cumulative effects for the CDNST are addressed in the DEIS recreation section. If any potential re-routes are moved forward, then they will be analyzed site-specifically at that time, and if needed, the Plan would then be amended to incorporate MA 3.6A direction to a new corridor” does not respond to expressed concerns. I reviewed the FEIS for effects and continue to find no discussion about the effects from locating the CDNST MA corridor area along lines identified on Map 41, which is in violation of 36 CFR 219.11(c) and 40 CFR 1502.16. In addition, identifying alternative locations of the CDNST MA corridor, along the lines identified on Map 41, is within the scope of this FEIS. Considering the FS concerns about the requirements of programmatic and site-specific analyses and decisions, all of the corridors along lines identified on Map 41 (and Figure 1 of this document) need to be protected until the location of the CDNST MA corridor and travel route are determined through programmatic and site specific analyses. The FS response did not follow the guidance in 40 CFR 1503.4(a) parts 1 through 4.
- The statement, “(12) ...the alternatives were then analyzed based on the acres of MA 3.6A within the corridor that met a high to very high SIO. These ranged from alternative C which had the most acres in high and very high at 50 percent to alternative E which had the least acres in high and very high at 24 percent” expresses that only one corridor was analyzed. Other potential MA corridors that follow the lines on Map 41 likely have settings that are better suited for the CDNST MA corridor. Another location could benefit of the CDNST and reduce conflicts with resource production programs (e.g., timber). The FS response did not follow the guidance in 40 CFR 1503.4(a) part 2.

The methodology described for analyzing the effects on the CDNST underscores that the CDNST management direction does not provide for the nature and purposes of the CDNST. The FEIS state:

- “Unmapped management areas (MAs 3.2A and 3.2B) were created that are defined as 0.5 mile from the centerline of the Continental Divide National Scenic Trail and Nez Perce National Historic Trail. The direction for these management areas overrides other management area directions that overlap the corridors.”
 - Observation: This direction is appropriate, but only if MA 3.6A includes established standards for addressing appropriate management direction for scenery and desired ROS classes (i.e., Primitive or Semi-Primitive Non-Motorized settings).
- “Effects to scenic and historic trails are calculated by identified management objectives related to recreational opportunity spectrum and scenic integrity objectives within a 1-mile-wide corridor.”
 - Observation: The CDNST forest-wide scenery standard addresses the foreground, but the forest-wide direction and MA 3.6A does not establish appropriate ROS direction. Therefore, the direction in MAs 3.3A, 3.3B (winter), 3.5A, 3.5B, 3.6A, 4.2, 4.3, and 5.1 would control. These MAs goals and desired conditions allow uses and activities that substantially interfere with the nature and purposes of the CDNST.

The CDNST MA has no assigned ROS objective (Table 22, FEIS Volume 3, Appendix B, page 1125). Therefore, CDNST MA 3.6A management direction does not provide for, “high-quality scenic, primitive hiking and horseback riding opportunities.”

Subject 450 – MA 3.6A – CDNST, Public Concern #106, Page 737

The Forest Service should create a Continental Divide National Scenic Trail corridor from Sheridan Pass to Brooks Lake and coordinate with the Bridger-Teton National Forest for potential effects towards forest management as portions of the route may be located on the Bridger-Teton. The Management Area should be located close to the following points: Sheridan Pass, Lava Mountain, Two Ocean Mountain, Togwotee Pass, and Brooks Lake with the boundary following the topographic features to the extent possible while being at least one-half mile wide on each side of the CDNST travel route. The Forest Service should consider managing the corridor under goals and standards set out in MA 3.6 prescription. The Forest Service

should consider revising the plan to describe the management area and should map the area and provide trail prescriptions such as trail class and managed uses.

FS Response:

The revised Forest Plan establishes a corridor within 0.50 mile of the centerline of the existing trail location. This corridor is set aside and described as MA 3.6A.

Observations and analysis: The public comment, “the Management Area should be located close to the following points: Sheridan Pass, Lava Mountain, Two Ocean Mountain, Togwotee Pass, and Brooks Lake with the boundary following the topographic features to the extent possible while being at least one-half mile wide on each side of the CDNST travel route” identified a reasonable alternative for locating the CDNST MA 3.6A corridor (40 CFR 1502.14). This alternative was not addressed in the FEIS. The FS response needs to follow the guidance in 40 CFR 1503.4(a) part 2.

Subject 450 – MA 3.6A – CDNST, Public Concern #109, Page 738

The Forest Service should consider revising Map 41 of the FEIS to address the discrepancy of not being identified as MA 3.6 on any of the alternative maps included on the DEIS and because the alternative maps should include all of the locations drawn on Map 41 of the FEIS.

FS Response:

A map will be added that shows where there the 3.6A management direction will apply.

Observations and analysis: The FS did not address the expressed concern about the DEIS regarding the range of reasonable alternatives to address capable areas for the CDNST MA corridor (40 CFR 1502.14). The FS response did not follow the guidance in 40 CFR 1503.4(a) parts 1 through 3.

Subject 450 – MA 3.6A – CDNST, Public Concern #110, Page 738

The Forest Service should consider adopting management strategies that encourage non-motorized winter recreation in the CDNST to include Togwotee Pass.

FS Response:

The management direction in MA 3.6A that allows existing snowmobile use to continue on the CDNST will continue. The decision maker will consider the public comments in making the final decision.

Observations and analysis: The FS did not address the reasonable alternative of locating the CDNST MA through the Togwotee Pass. Therefore, the responsible official cannot select this MA location without first developing a Supplemental DEIS. The FS response did not follow the guidance in 40 CFR 1503.4(a) part 2.

Subject 450 – MA 3.6A – CDNST, Public Concern #267, Page 738

The Forest Service should make a change on Page 47 of the DEIS that erroneously identifies that prescribing a non-motorized Continental Divide National Scenic Trail (CDNST) corridor as being outside the scope of the DEIS. The Forest should follow the 2009 CDNST Comprehensive Plan Chapter III and Forest Service Manual 2353.42 and 2353.44(b) for establishing a Management Area for the CDNST.

FS Response:

As noted on EIS pages 47 through 48, existing motorized segments will require site-specific analysis before any changes are made. Changes to the CDNST are considered site-specific projects and will be addressed in project planning. See also response to PC #76 regarding management of the Continental Divide National Scenic Trail.

Observations and analysis: The concern describes establishing a non-motorized CDNST corridor and doesn't mention the CDNST travel route. To provide for the nature and purposes of the CDNST, management direction would include a standard that establishes Semi-Primitive Non-Motorized ROS class direction for the CDNST MA 3.6A corridor. Prohibiting motorized use in the corridor and on travel routes would be addressed in the site-specific CDNST unit plan based in part on the CDNST MA 3.6 management direction. The revised Plan MA 3.6A management direction did not establish (prescribe/adopt) a standard that reflects the motor vehicle use limitations described in the CDNST Comprehensive Plan, FSM 2353.44b part 11, and does not comply with 36 CFR 219.2 and 36 CFR 219.11(c). The FS response did not follow the guidance in 40 CFR 1503.4(a) parts 1 and 2.

Subject 451 – MA 3.6A Desired Condition – CDNST, Public Concern #111, Page 739

The Forest Service should make the following changes to the plan: (1) Further examination of the “compatible” non-motorized recreational opportunities along the Continental Divide National Scenic Trail (CDNST), especially areas of the trail that are open for bicycles and motorized vehicles. (2) On page 128 of the DEIS, the direction for roads and trails suitable uses should be modified to the direction found in FSM 2353.44b parts 10 and 11. (3) The Shoshone

Plan needs to follow the 2009 CDNST Comprehensive Plan Chapter III and FSM 2353.42 and 2353.44(b) part 1 instead of the 1998 EA.

FS Response:

(1) The Plan allows both bicycle and motorized use where consistent with the Comprehensive Management Plan and where these uses do not interfere with the nature and purposes of the CDNST. A decision to restrict these uses if they become inconsistent would be a site-specific analysis.

(2) The Plan is consistent with both the Comprehensive Management Plan and FSM 2353.44b parts 10 and 11. Motorized use by the general public is generally prohibited unless that use is consistent with the applicable land management Plan and is designated in accordance with 36 CFR part 212, Subpart B and the vehicle class and use we allowed on that segment of the CDNST was constructed as a road prior to November 10, 1978. Bicycle use is also allowed where consistent with the Comprehensive Management Plan and where these uses do not interfere with the nature and purposes of the CDNST.

Observations and analysis:

- The statement that, “(1) the Plan allows both bicycle and motorized use where consistent with the Comprehensive Management Plan and where these uses do not interfere with the nature and purposes of the CDNST. A decision to restrict these uses if they become inconsistent would be a site-specific analysis” does not reflect policy which requires that the use be addressed in the CDNST unit plan prior to being allowed (FSM 2353.44b part 2 and 2353.44b part 10).
- The statement that, “(2) the plan is consistent with both the Comprehensive Management Plan and FSM 2353.44b parts 10 and 11. Motorized use by the general public is generally prohibited unless that use is consistent with the applicable land management plan and is designated in accordance with 36 CFR part 212, Subpart B and the vehicle class and use we allowed on that segment of the CDNST was constructed as a road prior to November 10, 1978. Bicycle use is also allowed where consistent with the Comprehensive Management Plan and where these uses do not interfere with the nature and purposes of the CDNST” does not reflect policy which requires that the use be addressed in the CDNST unit plan prior to being allowed (FSM 2353.44b parts 2, 10, and 11).

The FS responses did not follow the guidance in 40 CFR 1503.4(a) part 4.

The Forest Service should provide high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the Continental Divide National Scenic Trail (CDNST) corridor with a minimum width of 0.05 mile on either side of the CDNST. Management should be consistent with primitive or semi-primitive non-motorized Recreation Opportunity Spectrum class. Low intensity vegetation management should be utilized to maintain long term goals and stewardship objectives of the CDNST corridor.

FS Response:

The desired condition of MA 3.6A CDNST is the same as requested and does include a corridor 0.50 mile from centerline of the trail. Guideline #2 indicates managing for the ROS class of the management area in which the trail occurs. Standard #5 requires, where possible, that new or relocated sections be in an ROS class of primitive or semi-primitive non-motorized. Vegetation management is covered under guideline #1 which allows cutting or removal of trees under circumstances to reduce fuel loads and fire risk, curtailing insect attack, salvaging dead trees to enhance scenic views, or maintaining wildlife habitat diversity.

Observations and analysis: The stated response, “guideline #2 indicates managing for the ROS class of the management area in which the trail occurs. Standard #5 requires, where possible, that new or relocated sections be in an ROS class of primitive or semi-primitive non-motorized” underscores that the management direction in the Plan for MA 3.6A does not provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor. The CDNST MA 3.6 corridor passes through MA 3.3A, 3.3B, 3.5A, 3.5B, 4.2, 4.3, and 5.1. None of these MAs include management direction for providing Primitive or Semi-Primitive Non-Motorized ROS settings, except north of Brooks Lake where MA 3.3B is prescribed for a Semi-Primitive Non-Motorized setting in the summer.

Regarding guideline #2, MA 3.6A management direction does not establish (prescribe/adopt) a standard to provide a Semi-Primitive Non-Motorized ROS setting for the corridor, so the principle CDNST MA ROS class does not provide management direction that supports CDNST desired recreation setting and opportunities. In addition, the management direction for the other MAs that intersect the CDNST MA promote or allow use and activities that do not provide for the nature and purposes of the CDNST (Plan, Table 25, page 163 and FEIS, Volume III, Appendix B, Table 22, page 1125).

The FS responses did not follow the guidance in 40 CFR 1503.4(a) parts 1 through 4.

Subject 454 – MA 3.6A Standards – Public Concern #118, Page 741

The Continental Divide National Scenic Trail (CDNST) is a Concern Level 1 Travelway and needs to be managed as follows: (1) Ensuring that all management activities meet the Scenic Integrity Objective of High or Very High. (2) Recreation Manage for the ROS Class of Primitive and Semi-Primitive Non- Motorized, except motor vehicle use is allowed if such use is in accordance with the CDNST Comprehensive Plan direction (Chapter IV.6). (3) Permits for Special Uses Activities will not be authorized unless the activity contributes to the nature and purposes of the CDNST. (4) Reconstruction and maintenance of the CDNST travel route will be designated Trail Class 3, pack and saddle stock with no new system road construction or reconstruction unless there is a valid existing right. (5) There should be no surface occupancy for mineral leases, no permit issuance for the removal of mineral materials, and there should be a consideration for withdrawals for areas with locatable mineral findings. (6) The Forest Service should not move the Continental Divide National Scenic Trail off of existing motorized routes as addressed in Standard 6 unless the new location offers equivalent or superior scenic, historic, natural, or cultural values. Standard 6 should be re-written as “If motorized use that has been allowed becomes incompatible with management of the Trail, the conflict will be resolved after consideration of alternatives in a site-specific planning process.” (7) The provision in Table 26 that would allow new primitive roads in a semi-primitive motorized portion of MA 3.6 should be removed as it conflicts with Section 7 of the NTSA prohibiting the use of motorized vehicles on post-1978 roads by the general public. (8) Enhance the CDNST environment, fish and wildlife habitat improvements are allowed along with vegetation management activities that should enhance the scenic quality, meet trail construction and maintenance needs, and manage fuels through timber harvest, prescribed burning, and wildland fire activities. (9) The management area is classified as unsuitable for timber production and hauling or skidding along the CDNST route is prohibited along with the creation of landings or temporary roads. (10) Wildland fire management should consist of suppression strategies that minimize impact on CDNST values with no heavy equipment line construction on the CDNST allowed with restorative measures prescribed after fire suppression or fire use projects are completed. (11) The CDNST should be well identified with standard signs and markers and located and maintain developed campsites and privies where there is a need for overnight use and facilities are needed to protect Forest resources and ecological health. (12) The degree of contrast for management actions must range from none to weak in the foreground and from none to moderate in the middleground and background.

FS Response:

(1) Direction in the revised Forest Plan for the scenic integrity objective (SIO) is to manage for high to very high in primitive to semi primitive ROS classes and moderate to high in

roaded natural ROS classes. The decision maker will consider adjusting in an alternative for the final decision.

(2) Direction in the revised Forest Plan is to manage for the ROS the trail route that currently falls in with a standard included that requires new or relocated trail sections to be in primitive or semi-primitive.

(3) Special uses will be permitted unless they conflict with the nature and purpose of the trail, but will not have to contribute to the nature and purpose.

(4) The goal of this management area is to provide high-quality hiking and horseback opportunities. Reconstruction or maintenance of a CDNST travel route will not change the designated existing trail class. Road construction or reconstruction is controlled by the most restrictive direction of either the MA 3.6A or if more restrictive, the management area that the 3.6A corridor crosses.

(7) The Comprehensive Plan direction cited limits motorized use of the CDNST to pre-1978 roads, but allows roads in semi-primitive to cross the CDNST at intervals of no more than 0.5 mile, which is the standard included in the revised Forest Plan.

(9) Hauling and skidding are not a forest plan-level decision, but identifying lands suitable and unsuitable for timber production is. Any vegetation management proposal would go through site-specific analysis where hauling and skidding along the route would be addressed.

Observations and analysis:

- The statement that, “(1) Direction in the revised Forest Plan for the scenic integrity objective (SIO) is to manage for high to very high in primitive to semi primitive ROS classes and moderate to high in roaded natural ROS classes...” does not reflect the forest-wide standard: “Projects in foreground areas of scenic byways, National Scenic Trails, or designated wild and scenic rivers shall be designed to meet the scenic integrity objective of at least high” and should be corrected with added direction for the middleground viewshed.
- The statement that, “(2) Direction in the revised Forest Plan is to manage for the ROS the trail route that currently falls in with a standard included that requires new or relocated trail sections to be in primitive or semi-primitive” does not provide for achieving the nature and purposes of the CDNST, especially in MA 5.1.
- The statement that, “(3) Special uses will be permitted unless they conflict with the nature and purpose of the trail, but will not have to contribute to the nature and purpose” should follow the management direction in the Comprehensive Plan: “Assuring that the use is compatible with the nature and purposes of the CDNST (Chapter IV.7.c(2)(c)).

- The statement that, “(4) the goal of this management area is to provide high-quality hiking and horseback opportunities. Reconstruction or maintenance of a CDNST travel route will not change the designated existing trail class. Road construction or reconstruction is controlled by the most restrictive direction of either the MA 3.6A or if more restrictive, the management area that the 3.6A corridor crosses” is incomplete, inaccurate, and confusing. The goal description is incomplete for the MA 3.6A is to provide for the CDNST nature and purposes, which includes both recreation and conservation elements. The term “designated” as defined in the Travel Management Rule refers to allowing motor vehicle use on a travel route; such use and decisions for the MA 3.6 corridor will be addressed in the CDNST unit plan (FSM 2353.44b part 2). The term “most restrictive” needs to be clearly defined in the Plan describing how the management direction applies to overlapping MAs. Direction in FSM 2353.44b part 11 should be referenced.
- The statement that, “(7) the Comprehensive Plan direction cited limits motorized use of the CDNST to pre-1978 roads, but allows roads in semi-primitive to cross the CDNST at intervals of no more than 0.5 mile, which is the standard included in the revised Forest Plan” only applies to Semi-Primitive Motorized (and more developed ROS settings). Roads in a Semi-Primitive Non-Motorized ROS class setting, if any, would be managed as a ROS inconsistency as allowed by the CDNST unit plan. Direction in FSM 2353.44b part 11 should be referenced.
- Response (9) should clarify that a Semi-Primitive Non-Motorized ROS setting is not suitable for timber production (36 CFR 219.11(c), 36 CFR 219.14(c), and 36 CFR 219.15, and 36 CFR 219.27(b)(6)).

The FS responses did not follow the guidance in 40 CFR 1503.4(a) parts 2 and 4.

Subject 457 – MA 3.6A Management Approach – Public Concern #127, Page 744

The Forest Service should make the following changes to the DEIS: (1) A supplemental DEIS should be created to analyze all the potential corridor routes on Map 41 of the FEIS and disclose the effects of revised MA 3.6A direction on other resources. (2) On page 495, potential effects to Scenic Integrity and identified Recreation Opportunity Spectrum class effects for all of the CDNST MA corridors should be provided. (3) A Supplemental Draft Plan and supplemental DEIS should be issued to identify cumulative effects based on MA 3.6A directions that is consistent with the National Trails System Act.

FS Response: See response to PC #105 item (6):

Following is the FS direct and indirect effects discussion found in the FEIS on pages 510: **Recreation Opportunity Spectrum:** Where possible, the CDNST should be in recreation opportunity spectrum classes primitive and semi-primitive non-motorized. The following effects analysis describes the varying degree to which each alternative accomplishes this objective.

None of the alternatives would have all acres within the 1-mile corridor managed for recreation opportunity spectrum classes of primitive and semi-primitive non-motorized. Alternatives A, B, E, and G are somewhat similar in total percentage for these two recreation opportunity spectrum classes and vary from 23 percent (alternative E) to 25 percent (alternatives A, B, and G). Alternatives C and D have the greatest number of acres managed for these two classes, 32 percent and 31 percent, respectively. These two alternatives best meet the objective of locating the CDNST in primitive and semi-primitive. Alternative F does not have any acres within these two recreation opportunity spectrum classes.

Following is the FS cumulative effects discussion found in the FEIS on pages 520: **“Continental Divide National Scenic Trail:** Currently there are two potential proposed re-routes that have had cultural resource and botanical surveys completed. Because the CDNST relocation planning processes are ongoing, they were considered a reasonably foreseeable future action. The location of the proposed re-routes is designed to improve the intended management objectives related to recreation opportunity spectrum and scenic integrity objective. Alternatives C and D would have the least impacts to any of the proposed routes. These alternatives emphasize minimal development and contain management area allocation more consistent with the general management plan for the CDNST. Alternatives E and F would, respectively, have the most impacts to the alternative locations for the proposed CDNST re-routes because of the management area emphasis of more development. Alternatives B and G would have more impacts in terms of recreation opportunity spectrum, than alternatives C and D, but fewer impacts than alternatives E and F. In terms of the scenic integrity objective, alternative G most closely meets it because 78 percent of the area in the alternate route corridor is in the high category. Alternative A would have the greatest impacts to the proposed CDNST re-routes when using the two measurement indicators of recreation opportunity spectrum and scenic integrity objective.”

Observations and analysis:

- The recreation effects discussion in the FEIS and Table 146 illustrates that the MA 3.6A management direction does not provide for the nature and purposes of the CDNST. The Plan MA management direction and location results in only 25 percent of the corridor having an established (adopted/prescribed) Primitive or Semi-Primitive Non-Motorized ROS class for summer and zero percent in winter.

However, MA 3.6A could include a standard to establish (prescribe/adopt) a Semi-Primitive Non-Motorized ROS class setting for summer and winter in all inventoried Semi-Primitive ROS settings. This change alone would result in approximately 75 percent of the MA 3.6A corridor being managed for a Semi-Primitive Non-Motorized ROS setting. Other proposed locations for MA along the lines shown on Map 41 could increase further Semi-Primitive Non-Motorized ROS setting acres since those areas of the forest are less developed. These are reasonable alternatives to be evaluated in a Supplemental DEIS. Managing the CDNST to only obtain zero to 25 percent of the corridor in a Semi-Primitive Non-Motorized ROS setting would lead to uses that substantially interfere with the nature and purposes of the CDNST, which is not allowed by law (16 U.S.C. 1246(c)).

- The response states: “(6) analysis of the potential re-routes of the CDNST is a site-specific analysis that is not appropriate for this revised forest plan analysis. If these potential re-routes move forward a site-specific analysis will be done to analyze the effects of the new corridor.” This statement would be accurate if the contention was about identifying the CDNST travel route once the CDNST MA 3.6A corridor is located. However, my comment addressed establishing the CDNST MA corridor along the lines identified in Map 41 of the FEIS. In addition, the statement “if these potential re-routes move forward a site-specific analysis will be done to analyze the effects of the new corridor” is inconsistent with the Comprehensive Plan and FSM 2353.4. Map 41 describes several capable MA locations that are required to be addressed in the FEIS. It is implied that a site-specific assessment for the CDNST travel route is necessary prior to evaluating Forest Plan programmatic decisions. This is an inappropriate interpretation of 36 CFR 219.2 and 36 CFR 219.11(c) in regards to CDNST planning requirements (FSM 2353.44b part 1 and 40 CFR 1502.14).
- The setting along the presumed CDNST rights-of-way on Shoshone National Forest include, in part, lands that are inventoried as Semi-Primitive Non-Motorized and Semi-Primitive Motorized ROS settings. For these areas, it is reasonable to develop an alternative that establishes (adopts/prescribes) through the forest planning and NEPA processes Semi-Primitive Non-Motorized setting management direction for the CDNST MA corridor.
- Providing for nature and purposes are paramount requiring that management prescriptions, standards, and guidelines be associated with and support the CDNST nature and purposes (36 CFR 219.11(c)). MA standards and guidelines for 3.3A, 3.3B, 3.5A, 3.5B, 3.6A, 4.2, 4.3, and 5.1 prescribe management direction that negatively affect the CDNST by failing to provide for the CDNST nature and purposes. Most important, MA 3.6A does not establish

(prescribe/adopt) standards for appropriate ROS class indicators and thresholds that reflect the nature and purposes values.

Subject 2051 – Recreation – Legal Framework – Public Concern #720, Page 906

The Forest Service should add Executive Order 13195 to page 475 of the DEIS.

FS Response:

Thank you for your comment. The referenced Executive Order 13195 will be added to the FEIS:

“Executive Order 13195 Transportation Equity Act for the 21st Century (Public Law 105-178) which aims to achieve the common goal of better establishing and operating America's national system of trails.”

Observations and analysis:

- The correct citation for E.O. 13195 is Trails for America in the 21st Century: “By the authority vested in me as President by the Constitution and the laws of the United States of America, and in furtherance of purposes of the National Trails System Act of 1968...and to achieve the common goal of better establishing and operating America's national system of trails, it is hereby ordered as follows: Section 1... Federal agencies will, to the extent permitted by law and where practicable ... protect, connect, promote, and assist trails of all types throughout the United States. This will be accomplished by: ... (b) Protecting the trail corridors associated with National Scenic Trails...to the degrees necessary to ensure that the values for which each trail was established remain intact....”
 - E.O. 13195 is referenced in several locations in the planning documents, which will need to be corrected in text, analyses, and disclosure of effects. However, more importantly, management direction that is found in the various MAs that contribute to the CDNST management direction do not address part (b) of the E.O. insuring the nature and purposes values of the CDNST corridor are protected. The FS response did not follow the guidance in 40 CFR 1503.4(a) parts 1 through 5.
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The Forest Service should manage for quality recreation. To do this the final LRMP and FEIS must accomplish the following:

- *Identify recreational preferences of user groups in terms of experiences and settings;*
- *Identify physical and biological characteristics that make land suitable for different kinds of recreation;*
- *Identify places and settings where visitors can achieve specific experiences, while ensuring protection of resources and, in the case of motorized designations, minimizing impacts to forest resources and other users; Explain how decisions result in quality opportunities for different types of activities;*
- *Use the Recreation Opportunity Spectrum (ROS) to proactively plan for recreation opportunities that will maximize social and ecological sustainability as required by the ROS handbook; and Ensure that management activities do not shift ROS settings.*

FS Response:

Chapter 3 of the EIS discusses analysis of recreation resources per current planning direction found at 36 CFR 219.8 (b)(2) Sustainable recreation; including recreation settings, opportunities, and access; and scenic character; and at 36 CFR 219.10(a)(1), 10 (b) Requirements for plan components for a new plan or plan revision. (1) The plan must include plan components, including standards or guidelines, to provide for: (i) Sustainable recreation, including recreation settings, opportunities, and access, and scenic character. Recreation opportunities may include non-motorized, motorized, developed, and dispersed recreation on land, water, and in the air.

Observations and analysis: It is unclear why the new planning regulations are referenced since the new regulations are yet to be addressed through directives. The 1982 Planning Rule describes recreation resource integration requirements in 36 CFR 219.21. Recreation planning policy direction is found in FSM 2310. The FS response did not follow the guidance in 40 CFR 1503.4(a) part 5.

The Forest Service should consider addressing and clarifying the recreation standards to include: ... 2) clarifying the recreation standards on page 173 because it is inconsistent with the comprehensive plan and policy and does not address the direction in FSM 2352.44(b)(1)....

FS Response:

(2) The proposed standards and guidelines are consistent with the CDNST Comprehensive Management Plan (CRMP). For example the CRMP requires, where possible, that the CDNST is located in primitive or a semi-primitive non-motorized recreation opportunity spectrum setting, but allows others if it is not possible. Direction in FSM 2353.(b)(1) requires a forest in a land management plan to establish a management area for the CDNST broad enough to protect it (the Plan established MA 3.6A, which includes a corridor within 0.50 mile of centerline of the trail); prescribe desired conditions, objectives, standards, and guidelines (the revised Forest Plan establishes these); and establish a monitoring program (the Plan discusses monitoring requirements).

Observations and analysis:

- The statement describing that, “the CRMP requires, where possible, that the CDNST is located in primitive or a semi-primitive non-motorized recreation opportunity spectrum setting, but allows others if it is not possible” could not be found in the CDNST Comprehensive Plan. However, the response may be referring to the direction in Chapter IV.B.1: “Use the Recreation Opportunity Spectrum (ROS) system in delineating and integrating recreation opportunities in managing the CDNST. Where possible, locate the CDNST in primitive or semi-primitive non-motorized ROS classes; provided that the CDNST may have to traverse intermittently through more developed ROS classes to provide for continuous travel between the Canada and Mexico borders.” The setting along the presumed CDNST rights-of-way on Shoshone National Forest include lands that are inventoried as Semi-Primitive Non-Motorized, Semi-Primitive Motorized, and Roaded Natural ROS settings. Along the high potential route segments that are identified on Map 41, it is **possible** to establish (prescribe/adopt) a Semi-Primitive Non-Motorized ROS class setting for MA corridor, especially in areas inventoried as either Semi-Primitive Non-Motorized and Semi-Primitive Motorized.
- An example of a situation on the Forest where the CDNST may “**have to traverse intermittently** through more developed ROS classes” is crossing U.S. Highway 26.
- The statement that, “prescribe desired conditions, objectives, standards, and guidelines (the revised Forest Plan establishes these)” does not accurately describe the situation. The preamble to the FSM 2353.44b part 1 direction describes, “the land management plan for an administrative unit through which the CDNST passes must provide for the nature and purposes of the CDNST (FSM 2353.42) and, in accordance with the programmatic requirements of the National Trails System Act, as amended (16 U.S.C. 1244(f)), and the CDNST

Comprehensive Plan, as amended....” Providing for nature and purposes are paramount requiring that goals, desired conditions, standards, and guidelines be associated with and support the CDNST nature and purposes (36 CFR 219.2 and 36 CFR 219.11(c)). MA 3.6A does not prescribe standards that establish appropriate ROS setting indicators and thresholds which reflect the nature and purposes values. In addition, MA standards and guidelines for 3.3A, 3.3B (winter), 3.5A, 3.5B, 3.6A, 4.2, 4.3, and 5.1 also fail to prescribe management direction to provide for the CDNST nature and purposes.

- Another consideration is that the CDNST MA corridor location must avoid developed areas such as MA 5.1—to the extent practicable, efforts be made to avoid activities incompatible with the purposes for which such trails were established (16 U.S.C. 1246(c)).

The FS response did not follow the guidance in 40 CFR 1503.4(a) parts 1 through 4.